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Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE MARILA ANN WATKINS,
Debtor.

BAP No. WO-97-028

FIRST BANK OF CHANDLER,
Appellant,

Bankr. No. 96-17058
Chapter 13

v.

MARILA ANN WATKINS,
Appellee.

ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the Western District of Oklahoma

Before PUSATERI, PEARSON, and BOULDEN, Bankruptcy Judges.

PUSATERI, Bankruptcy Judge.

First Bank of Chandler (“Bank”) appeals the Bankruptcy Court’s order determining that Marila Ann Watkins (“debtor”) is entitled to exempt a tractor, a plow, a disk, a square hay baler, and a hay swather as tools of a trade under Oklahoma Statutes Annotated, title 31, §1(A)(6) (West 1997). We affirm.¹

* This order and judgment has no precedential value and may not be cited, except for the purposes of establishing the doctrines of law of the case, res judicata, or collateral estoppel. 10th Cir. BAP L.R. 8010-2.

¹ After examining the briefs and appellate record, the Court has determined unanimously to grant the Bank’s request for a decision on the briefs. See Fed. R. Bankr. P. 8012; 10th Cir. BAP L.R. 8012-1(a). The case is therefore submitted without oral argument.

FACTS

The debtor is a single parent with four dependent children living with her on a forty-acre homestead. She receives \$750 per month in child support for them. During the school year, she works as a bus driver, making about \$495 per month, and receives \$121 per month in unemployment compensation during the summer when the buses are not being operated. She makes \$135 per month boarding horses. She supplements her summer income by baling hay on her homestead and helping her father bale hay on leased land in return for a share of the hay, which she either sells or feeds to the horses she boards; averaged over the whole year, her hay baling brings in \$80 per month. She sometimes plants wheat on her homestead and either harvests it or grazes horses on it, but had not made any money from that for the two years before she filed for bankruptcy. Altogether, she takes in about \$1,580 per month. On her bankruptcy schedules, she reported monthly expenses of \$916.75, which included \$118 in regular expenses from the operation of a business.

In 1995, the debtor borrowed money from the Bank, giving it a security interest in various items she owned, including a tractor, a plow, a disk, a square hay baler, and a hay swather. She filed a chapter 13 bankruptcy case in September 1996. Among other things, she claimed exemptions under Oklahoma law for her homestead and for most of the items pledged to the Bank, including those just listed, as “[i]mplements of husbandry necessary to farm the homestead,” Okla. Stat. Ann., tit. 31, § 1(A)(5). Later, she amended her exemptions to claim that the “implements of husbandry” were also exempt as tools of a trade under Okla. Stat. Ann., tit. 31, § 1(A)(6). At the same time, pursuant to 11 U.S.C.A. § 522(f), she moved to avoid the Bank’s lien on those items. The Bank objected to the debtor’s implements of husbandry and tools of trade exemptions and to her motion to avoid its lien.

At a hearing, the debtor testified that she used the specified items to bale

hay and sometimes to plant wheat on her homestead. She said she needed the income from that work to be able to make her chapter 13 plan payments during the summer months. An employee of the Bank testified that he had viewed the debtor's homestead in December 1996 and saw no sign that it had been cultivated for at least two or three years. He also said that, in his opinion, the equipment the debtor wanted to avoid the lien on was insufficient to use in an operation that would be considered someone's trade or occupation and to support a family.

The Bankruptcy Court ruled the equipment could be exempted as "implements of husbandry" even if it was not currently being used to farm the homestead because it was "necessary" for that purpose. The Court also ruled the equipment could be exempted as tools of a trade since the debtor used it to earn income at least in the summer months. The Court indicated it did not believe the Oklahoma Supreme Court had limited the term "trade" to a full-time occupation or limited a debtor to a single trade or occupation. Finally, the Court ruled the Bank's lien on the equipment could be avoided under § 522(f)(1)(B)(ii) of the Bankruptcy Code since the equipment qualified as tools of her trade. On reconsideration, the Court concluded the debtor could not avoid the Bank's lien on certain other items but left intact its ruling on the items listed above. The Bank has appealed but the debtor has not cross-appealed, so only the propriety of the debtor's exemption of the tractor, plow, disk, square hay baler, and hay swather and her avoidance of the Bank's lien on those items is before us in this appeal.

DISCUSSION

We review the Bankruptcy Court's findings of fact only to determine if they are clearly erroneous but review its conclusions of law *de novo*. We do not perceive the Bank to be questioning that Court's factual findings but only its interpretation of Oklahoma law. The Bank seems to concede its lien could be avoided if that law authorizes the debtor's claimed exemption.

The exemptions in question are provided by Oklahoma Statutes Annotated, title 31, § 1 (West 1997), which provides in pertinent part:

A. Except as otherwise provided in this title and notwithstanding subsection B of this section, the following property shall be reserved to every person residing in the state, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as herein provided:

. . .

5. Implements of husbandry necessary to farm the homestead; [and]

6. Tools, apparatus and books used in any trade or profession of such person or a dependent of such person

While the debtor claimed the equipment was exempt under subsection (A)(5) and the Bankruptcy Court agreed with her, the Court did not refer to this provision when it decided the Bank's lien could be avoided. Instead, the Court referred to § 522(f)(1)(B)(ii), which allows a debtor to avoid a lien that impairs an exemption if the lien is "(B) a nonpossessory, nonpurchase-money security interest in any— . . . (ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor," and avoided the Bank's lien because it believed that the debtor also qualified for the tools of trade exemption under subsection (A)(6) of the Oklahoma statute. Although the Bank argues about the Bankruptcy Court's decision under (A)(5), we conclude we need not address that question because we agree with the Court's ruling under (A)(6).

The Oklahoma Supreme Court has said, "This court is committed to the rule that statutes exempting property from forced sale for the payment of debts are to be given a reasonable construction to effect their intent and purpose and in case of doubt the doubt is to be resolved in favor of the exemption." *Davis v. Wright*, 152 P.2d 921, 922 (Okla. 1944). *See also In re Siegmann*, 757 P.2d 820, 822 (Okla. 1988) (quoting same language from *Davis*); *Lindsey v. Kingfisher Bank & Trust Co. (In re Lindsey)*, 832 P.2d 1, 4 (Okla. 1992) (paraphrasing *Siegmann's* quotation of *Davis*). Nothing in the words "[t]ools, apparatus and

books used in any trade or profession” immediately suggests a debtor must make a particular amount of income or have a particular level of need for the income she makes from an activity for it to qualify as a trade or profession under the Oklahoma statute. Nevertheless, the crux of the Bank’s argument is that the exemption “applies to property which is used in a trade or profession and is reasonably necessary for the support of the debtor.” *Appellant’s Brief*, at 9. The Bank proceeds from this premise to claim both that the debtor has sufficient other income that she does not need the \$80 per month she makes by baling hay to support herself and her children, and that she makes so little by baling hay that the activity does not qualify as a trade.

The language we have quoted from the Bank’s brief is based on a misreading of the *Seigmann* and *Lindsey* decisions. In *Seigmann*, the court declared that “[t]he statute reflects an intent to insure that the items necessary to allow a person to continue to work to support himself are secured to that person exempt from seizure and sale.” 757 P.2d at 822. Later, the court said the tools of the trade exemption “applies to any property which comes within the scope of the terms tools, apparatus or books, is used in the trade or profession of the debtor or a dependent of the debtor, and is reasonably necessary, convenient or suitable for production of work in that trade or profession regardless of size, source of power, mobility or mode of operation.” 757 P.2d at 824. In *Lindsey*, the court ruled, “[b]ecause of the skill involved and the necessity of experience in operating the equipment, we hold that a ‘farmer’ who neither owns nor leases a homestead but who makes his living doing custom combining and plowing for others qualifies as a tradesman, and is entitled to the [tools of trade] exemption.” 832 P.2d at 4. The Bank has altered these statements by combining the “reasonably necessary” language with the “to support himself” or “to make his living” language to suggest the Oklahoma courts apply a stricter test than they do when considering whether items qualify as tools of a debtor’s trade. To

determine whether tools are reasonably necessary for a debtor to support himself or to make a living, a court might have to consider a debtor's total income, income from the tools in question, total expenses, and perhaps even overall standard of living. Instead, we believe *Siegmann* and *Lindsey* require nothing more than that a debtor actually produce some income, as this debtor does, from using the tools claimed to be exempt. As a result, we are convinced the Bankruptcy Court correctly concluded these items qualified as tools of a trade under the Oklahoma statute.

As indicated earlier, except for the conclusion that the equipment qualified as tools of a trade of the debtor, we do not perceive the Bank to be contesting the Bankruptcy Court's decision that the Bank's lien could be avoided under 11 U.S.C.A. § 522(f)(1)(B)(ii). Consequently, because we conclude the lower court correctly applied Oklahoma's tools of trade exemption, we must affirm its ruling avoiding the Bank's lien on the debtor's tools of trade.

Affirmed.